

CHAPTER 93

(SB 160)

AN ACT relating to the sale of consumer goods during a state of emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 367.372 is amended to read as follows:

As used in KRS 367.372 to 367.378, unless the context requires otherwise:

- (1) "Building materials" means lumber, construction tools, windows, and anything else used in the building or rebuilding of property;
- (2) "Consumer food item" means any article used or intended for use for food, drink, confection, or condiment by a person or animal;
- (3) **"Cost" means any cost directly or indirectly related to the sale of a good, provision of a service, or the operation of the seller's business, and includes any actual or anticipated replacement cost;**
- (4) "Emergency supplies" includes but is not limited to water, flashlights, radios, batteries, candles, blankets, soap, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers;
- ~~(5)(4)~~ "Gasoline" means any fuel used to power any motor vehicle or power tool;
- ~~(6)(5)~~ "Goods" has the same meaning as in KRS 355.2-105;
- ~~(7)(6)~~ "Housing" means any rental housing and includes any housing provided by a hotel or motel;
- ~~(8)(7)~~ "Medical supplies" includes but is not limited to prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products;
- ~~(9)(8)~~ "Person" has the same meaning as in KRS 446.010;
- (10) "Price prior to the declaration" means the person's price for a good or service on the day before the date of the Governor's order implementing the provisions of Section 2 of this Act;**
- ~~(11)(9)~~ "Repair or reconstruction services" means services performed by any person for repairs to residential or commercial property of any type that is damaged as a result of a natural or man-made disaster or emergency resulting from an event referred to in subsection (11) of this section;
- ~~(12)(10)~~ "Services" means work, labor, or services, including services furnished in connection with the sale or repair of goods or real property or improvements thereto;
- ~~(13)(11)~~ "State of emergency" means a natural or man-made disaster resulting from a tornado, earthquake, flood, fire, riot, storm, act of war, threat of war, military action, the time of instability following a terrorist attack, or any other event for which a state of emergency has been proclaimed by the President of the United States or declared by the Governor. It shall also include the duration of a Condition Red as declared by the United States Department of Homeland Security under the Homeland Security Advisory System; and
- ~~(14)(12)~~ "Transportation, freight, and storage services" means any service that is performed by a person that contracts to move, store, or transport personal or business property or rents equipment for those purposes.

➔Section 2. KRS 367.374 is amended to read as follows:

- (1) (a) When a Condition Red has been declared by the United States Department of Homeland Security under the Homeland Security Advisory System or the Governor has declared a state of emergency under KRS 39A.100, the Governor may implement this section by executive order for a period of **fifteen (15)**~~thirty (30)~~ days from notification of implementation, as required by KRS 367.376. The order implementing this section shall be limited to the geographical area indicated in the declaration of emergency. **The Governor may terminate or limit the scope of the order at any time.**
- (b) No person shall sell, rent, or offer to sell or rent, regardless of whether an actual sale or rental occurs, a good or service listed in this paragraph or any repair or reconstruction service for a price which is grossly in excess of the price prior to the declaration and unrelated to any increased cost to the seller. Goods and services to which this section applies are:

1. Consumer food items;
2. Goods or services used for emergency cleanup;
3. Emergency supplies;
4. Medical supplies;
5. Home heating oil;
6. Building materials;
7. Housing;
8. Transportation, freight, and storage services; and
9. Gasoline or other motor fuels.

(c) A **person's** ~~person who increases a~~ price does not violate this subsection if *it is*:

1. ~~Related~~ ~~the price increase is attributable~~ to an additional cost imposed by a supplier of a good or other costs of providing the good or service, including an additional cost for labor or materials used to provide a service;
2. **Ten percent (10%) or less above the price prior to the declaration;**
3. **Ten percent (10%) or less above the sum of the person's costs and normal markup for a good or service;**
4. **Generally consistent with fluctuations in applicable commodity, regional, national, or international markets, or seasonal fluctuations; or**
5. **A contract price, or the result of a price formula, established prior to the order implementing this subsection.**

(d) **Whether a price violates this subsection is a question of law. In determining if a violation of this subsection has occurred, the court shall consider all relevant circumstances, including prices prevailing in the locality at that time.**

- (2) The provisions of this section may be extended for **up to three (3) additional fifteen (15) day periods** ~~an additional period, not to exceed thirty (30) days,~~ by the Governor, if necessary to protect the lives, property, or welfare of the citizens.
- (3) If a person sold or rented a good or service listed in subsection (1) of this section at a reduced price in the thirty (30) days prior to the Governor's implementation of this section, the price at which that person usually sells or rents the good or service in the area for which the declaration was issued shall be used in determining if the person is in violation of this section.
- (4) If a person did not sell or rent or offer to sell or rent a good or service listed in subsection (1) of this section prior to the Governor's implementation of this section, the price at which a good or service was generally available in the area for which the declaration was issued shall be used in determining if the person is in violation of this section.

➔Section 3. KRS 367.378 is amended to read as follows:

- (1) A willful violation of KRS 367.374 is punishable by a civil **monetary** penalty of an amount not to exceed five thousand dollars (\$5,000) for the first violation and an amount not to exceed ten thousand dollars (\$10,000) for each subsequent violation, **with an aggregate total not to exceed twenty-five thousand dollars (\$25,000) for any twenty-four (24) hour period against any person who violates Section 2 of this Act. No additional civil monetary penalties may be imposed under this chapter for conduct prohibited by Section 2 of this Act.**
- (2) **Except as provided in subsection (1) of this section,** all of the remedies, powers, and duties provided by KRS Chapter 367 shall apply with equal force and effect to an act declared unlawful by KRS 367.374.
- (3) Nothing in KRS 367.372 to 367.378 shall be construed to limit or restrict the exercise of powers or the performance of the duties of the Attorney General which he or she is authorized to exercise or perform under any other provision of law.

Signed by Governor April 2, 2018.

